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tributes to the delay, and he is limited to actual damages. *Mosler Safe Co.* v. *Maiden Lane Safe Deposit Co.* (1910) 199 N. Y. 479, 93 N. E. 81; *United States* v. *United Eng. Co.* (1914) 234 U. S. 236, 34 Sup. Ct. 843. This is on the theory that the time is set at large by the owner's act; for the prompt performance of the work is the condition on which the contractor's liability depends, and when the obligee himself obstructs the performance of a condition, it is excused. 3 Halsbury, Laws of England, § 511. But the owner generally inserts a provision in the contract giving the architect power to certify an extension of time in certain cases; by virtue of which the effect of a delay caused by the owner operates merely as an extension of the time for performance, and a new time is substituted for the old. *Laidlaw-Dunn-Gordon Co.* v. *United States* (U. S. 1912) 47 Ct. Cl. 271; *Paddock* v. *Stout* (1887) 121 Ill. 571, 578, 13 N. E. 182. The other provisions of the contract remain unaffected, and consequently the builder is liable in liquidated damages, but the period of delay caused by the owner is deducted from the total delay. *Van Buskirk* v. *Board of Education* (1910) 78 N. J. L. 650, 75 Atl. 909; *Cook & Laurie* v. *Denis* (1909) 124 La. 161, 49 So. 1014. Although the courts are not disposed, in the absence of this provision, to apportion the delay when it is caused by both parties, *Jefferson Hotel Co.* v. *Brumbaugh* (C. C. A. 1909) 168 Fed. 867, 874; *Mosler Safe Co.* v. *Maiden Lane Safe Deposit Co., supra* 487, yet if it can be done with reasonable certainty, and the contract provides for allowing extensions, the courts will undertake to do so. *Schmulbach* v. *Caldwell* (C. C. A. 1912) 196 Fed. 16. But in such case the burden of proving for what days credit should be allowed rests on the contractor. *Schmulbach* v. *Caldwell, supra.* In the instant case, the contractor's time for performance was extended 7 days by the delay of the owner, but he was rightly held liable in liquidated damages for his own additional unexcused delay.

EVIDENCE—PHOTOGRAPHS—HYPOTHETICAL SITUATION.—In an action for personal injuries, the defense offered in evidence, in order to prove its theory of the case, several photographs of a man standing in various assumed positions on top of the tank where the plaintiff was injured. *Held,* the evidence was inadmissible. *Colonial Refining Co.* v. *Lathrop* (Okla. 1917) 166 Pac. 747.

Maps, diagrams or photographs are admitted to illustrate the testimony of a witness as aids to the jury in applying the evidence, *State* v. *Hersom* (1897) 90 Me. 273, 38 Atl. 160; *Western Gas Constr. Co.* v. *Danner* (C. C. A. 1899) 97 Fed. 882, their admission for this purpose largely lying within the discretion of the trial court. *Mauch* v. *Hartford* (1901) 112 Wis. 40, 87 N. W. 816. They are also admitted as direct evidence of the facts in issue. *Livermore etc. Co.* v. *Union etc. Co.* (1900) 105 Tenn. 187, 58 S. W. 270; *Louisville & N. R. R.* v. *Brown* (1908) 127 Ky. 732, 106 S. W. 795; see *People* v. *Loper* (1910) 159 Cal. 6, 112 Pac. 720. A photograph itself, however, is a nonentity if it is not vouched for by a witness as a true representation of the conditions portrayed. See *Baustian* v. *Young* (1899) 152 Mo. 317, 53 S. W. 921; 3 Chamberlayne, Evidence, § 1760. Being merely another than verbal expression of somebody's testimony, a photograph will not be admitted if through it a witness testifies to an irrelevant fact, *McClurg* v. *Brenton* (1904) 123 Iowa 368, 98 N. W. 881, and, if the photograph tends to prejudice the interests of one of the parties,

it is not admitted. *Guhl* v. *Whitcomb* (1901) 109 Wis. 69, 85 N. W. 142. The question whether a picture is misleading would seem to be a question for the jury just as the credibility of any other testimony. 1 Wigmore, Evidence, § 792; *contra, Ortiz* v. *State* (1892) 30 Fla. 256, 11 So. 611. The decision in the principal case, that a photograph of a hypothetical situation is inadmissible, is supported by the authorities. *Babb* v. *Oxford Paper Co.* (1904) 99 Me. 298, 59 Atl. 290; *Stewart* v. *St. Paul City Ry.* (1899) 78 Minn. 110, 80 N. W. 853; *Wyldes* v. *Patterson* (1915) 31 N. D. 282, 153 N. W. 630. The reason for excluding the evidence is that it is irrelevant since it does not help to determine any fact in issue but simply gives the party's hypothesis as to how the facts occurred. It is submitted that the holding in the principal case is correct.

GIFT—ENGAGEMENT RING—CONDITION SUBSEQUENT.—The defendant, having broken her contract to marry the plaintiff, refused to return the engagement ring. *Held,* the plaintiff could recover the ring. *Jacobs* v. *Davis* (1917) 2 K. B. 532.

Where, under the circumstances of the principal case, there had been no expression of the intention of the parties, it is submitted that the most likely inference is that there was an absolute gift. See *Stromberg* v. *Rubinstein* (1897) 19 Misc. 647, 44 N. Y. Supp. 405. But, on the basis of the assumption that in the great majority of such cases the ring is returned, it might well be argued that such was the intention of the parties. If this is the proper inference of fact, there seems no reason of policy why the intention should not be carried out. But it is difficult to find a legal basis for the recovery of the ring. The principal case refers to it as a pledge to bind the contract, which, if the recipient breaks the agreement, she must return. This view seems to be in accord with the history of betrothal gifts. *Cf.* Pollock & Maitland, History of English Law (2nd ed.) 366. There is, however, only a analogy between this case and what is known in modern law as a pledge. And moreover, under this construction, the plaintiff could recover even if he had broken the contract, provided he paid damages for the breach; *cf.* Goodeve, Personal Property, (5th ed.) 28, which proves too much since it seems probable from the scant authorities that unless the defendant has broken the contract, the plaintiff would not recover. *Cf. Robinson v. Cumming* (1742) 2 Atk. *409; 1 Fonblanque, Equity (3rd ed.) c. 6, § 15. A similar difficulty arises if the theory of ordinary bailment is adopted. Another basis for recovery is suggested in a case where money had been advanced by the plaintiff to the defendant to purchase a trousseau. It was held that upon the defendant's breach of the contract to marry, plaintiff could recover in assumpsit. *Williamson* v. *Johnson* (1890) 62 Vt. 378, 20 Atl. 279. While the reasoning in this case is confused, the basis of the opinion seems to be that of conditional gift. It has been held that there cannot be a gift of personalty on condition subsequent. *Irish* v. *Nutting* (N. Y. 1867) 47 Barb. 370. But there seems no reason in the nature of things why there could not be such a gift, and there is authority for holding it valid. *Blanchard* v. *Sheldon* (1871) 43 Vt. 512; Childs, Personal Property § 228; Goodeve, *supra,* 85; Thornton, Gifts & Advancements § 94. It would seem that this theory affords the most satisfactory basis for an action at law.